IN THE HIGH COURT OF JUDICATURE AT MADRAS

DATE : 21.02.2008

CORAM

THE HONOURABLE MR. JUSTICE S.J.MUKHOPADHAYA
AND
THE HONOURABLE MR. JUSTICE M.VENUGOPAL

W.P. NO. 1535 OF 2007
AND
M.P. NO. 1 OF 2007

K.Vasantha .. Appellant

- Vs -

1. M.Velusamy

2. The Director of School Education
College Road, Chennai 600 006.

3. The Joint Director of School Education (Hr. Sec.)
College Road, Chennai 600 006.

4. The Chief Educational Officer
Tiruvallore District
Tiruvallore.

5. The District Educational Officer
Ponneri Education District
Ponneri, Tiruvallore.

6. The Secretary
Vijayanta Higher Secondary School
H.V.F. Estate, Avadi
Chennai 600 054. .. Respondents

Writ Appeal filed against the order dated 25th Oct., 2007, passed by learned single Judge in W.P. No.20592/07.

For Appellant : Mr. T.Sellapandian, for
Mr. M.Hidayathulla Khan

For Respondents : Mr. M.Ravindran, SC, for
Mr. B.Manoharan for R-1
Mr. D.Srinivasan, AGP, for RR-2 to 5
Mr. G.Devadass for R-6

JUDGMENT

S.J.MUKHOPADHAYA, J.

The appellant, who was the 6th respondent to the writ petition, challenged the impugned order dated 25th Oct., 2007, passed by learned single Judge in W.P. No.20592/07. By the said order, the

Court allowed the writ petition in favour of the writ petitioner, the 1st respondent herein.

2. The matter relates to promotion to the post of Headmaster of Vijayanta Higher Secondary School (hereinafter referred to as the 'school'). The post of Headmaster having fallen vacant, the school committee, in its meeting dated 26th May, 2006, ordered to promote Mr.M.Velusamy (writ petitioner) as Headmaster with effect from 1st June, 2006. The said order of promotion was challenged by Tmt.Vasantha, the appellant, before the Joint Director of School Education (Hr. Secondary), Chennai, the 3rd respondent herein, who, vide its proceeding dated 10th May, 2007, declared the appellant, Tmt.Vasantha, more meritorious and senior to the writ petitioner, Mr.M.Velusamy and allowed her representation. The said order was challenged by the 1st respondent/writ petitioner in the writ petition in question. Pursuant to stay of the proceedings of the 3rd respondent, the 1st respondent/writ petitioner, Mr.M.Velusamy, continued as Headmaster of the school and superannuated during the pendency of the writ petition on 30th June, 2007.

3. Learned single Judge, having noticed the fact that the 1st respondent/writ petitioner superannuated from the post of Headmaster, without going into the merits and for the reasons, as quoted hereunder, set aside the order dated 10th May, 2007, passed by the 3rd respondent:-
"10. By virtue of the stay of the impugned proceedings of the 2nd respondent, the petitioner continued as Headmaster of the 5th respondent-school and retired as such on 30th June, 2007 on attaining the age of superannuation. Now, it shall be a futile exercise to do post-mortem of the order of the second respondent. The petitioner by virtue of holding the post of Headmaster may get some retirement benefits and the same need not be stalled after his retirement on 30.6.2007. If the petitioner is still holding the post, there will be some justification in considering the matter on merits to oversee whether the impugned proceedings of the second respondent dated 10.3.2007 is valid or not. Now, as stated already, the petitioner continued in the post of Headmaster till has retired from service on 30.6.2007 and practically, the prayer sought for by the petitioner in this writ petition has almost become infructuous. In fact, Mr.T.Sellapandian, the learned counsel appearing for the 6th respondent fairly conceded that since the petitioner already retired from service, the 6th respondent may not have any grievance, if the case of the 6th respondent is considered for promotion as Headmistress on and from the date of the petitioner attaining the age of superannuation. In view of the above facts and circumstances of the case, I am constrained to hold that the impugned order of the 2nd respondent is liable to be quashed and, accordingly, it is quashed. It is needless to say that the petitioner is entitled to all retirement benefits as Headmaster of the 5th respondent-school."

4. Both the parties claim to be senior to each other and also claim meritorious. While according to the appellant seniority should be determined on the basis of date of initial appointment, learned counsel for the 1st respondent submitted that as per statutory regulation, it should be counted on the basis of the age.

5. From the records the following facts emerge, which has not been disputed by the parties. Tmt.K.Vasantha (appellant) and Mr.M.Velusamy (1st respondent), both of them were initially appointed as B.T. Assistant in the year 1981 and subsequently promoted as P.G. Assistant on the same date, as detailed hereunder :-

Tmt. K.Vasantha
Mr. M.Velusamy
Date of appointment as B.T. Assistant
-

16th Jan., 1981
17th Dec., 1981
Date of appointment as P.G. Assistant
-
11th Sept., 1985
11th Sept., 1985
From the appellate order dated 10th May, 2007, it further appears that the appellant, Tmt.K.Vasantha having shown 100% result in 10th and 12th Public examinations, she received commendation with Rs.1,000/= as cash prize from the management.
From the aforesaid data, it will be evident that the appellant, Tmt.K.Vasantha was senior to Mr.M.Velusamy, 1st respondent, as B.T. Assistant and both having promoted as P.G. Assistant on the same date, i.e., 11th Sept., 1985, in normal course persons senior in the lower grade, i.e., the appellant should rank senior to the 1st respondent, who was appointed later, in absence of any contrary rule.

6. Counsel for the appellant relied on Section 15 (4) of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, as published by M/s.C.Sitaraman & Co. Pvt. Ltd., 1st edition, July, 2005. Therein, provisions have been made for promotion on the ground of merit and ability, seniority being considered only when merit and ability are approximately equal, as quoted hereunder :-

"15. Qualifications, conditions of service of teachers and other persons.- (1) * * * * * *
(4) (i) Promotion shall be made on grounds of merit and ability, seniority being considered only when merit and ability are approximately equal.
[(ii) Appointments to the various categories of teachers shall be made by the following methods :-
(i) Promotion from among the qualified teachers in that school.
(ii) If no qualified and suitable candidate is available by method (i) above, -
(a) Appointment of other persons employed in that school, provided they are fully qualified to hold the post of teachers;
(b) Appointment of teachers from any other school;
(c) Direct recruitment.
* * * * * * * *"
On the other hand, according to learned counsel for the 1st respondent/writ petitioner, the said publication has not published the amended rule 15 and placed on record a copy of the Tamil Nadu Recognised Private Schools (Regulation) Rules, 1974, as downloaded from the internet. Therein, Rule 15 (4) talks of promotion to the category of teacher and other persons on the basis of the school seniority and reads as follows :-

"15. Qualifications, conditions of service of teachers and other persons.- (1) * * * * * *
(4) (1) (i) Promotion to the category of teachers and other persons shall be made on the basis of school seniority.
(ii) Appointments to the various categories of teachers shall be made by the following methods.
(a) Promotion from among the Qualified teachers in that school in the next lower grade on identical scales of pay having due regard to the subject and language requirement. If qualified and suitable candidates are not available in that grade, candidates in the further next lower grade shall be considered.
(b) While filling the vacancies in the cadre of P.G. Teachers, candidates who have obtained a Master's Degree and Bachelor's Degree in the same subject or language as main shall be given first preference.
(2) If no qualified and suitable candidate is available by method (1) above, appointment shall be made in the following order
(a) Appointment of other persons employed in that school, provided they are fully qualified to hold

the post of teacher.
(b) Appointment of teachers from any other school
(c) Direct Recruitment.
In the case of appointment from any other school or by direct recruitment, the school Committee shall obtain the prior permission of the District Elementary Educational Officer in respect of Pre-Primary, Primary and Middle School and that of the inspecting officer in respect of High and Higher Secondary Schools, setting out the reasons for such appointment.
For the purpose of promotion, a panel of names of prima facie fully qualified and eligible candidates in each category shall be prepared as on 1st June of each year. If there is more than one category on identical scale of pay they should be grouped together. The panel should contain the names of all fully qualified and eligible candidates. Their names should be arranged according to their inter-se seniority determined by the date of joining duty in that school. If it happens to the be same date for more than one, their inter-se-seniority shall be fixed with reference to their dates of birth, the elder being given the higher place.
For Direct Recruitment, the private aided Educational Institutions shall make all appointments in their institutions through the Employment Exchange only. When no candidate is available from the Employment Exchange or the candidates who are sponsored from the Employment Exchange are found to be unfit, it would be open to the Private Educational Agency to seek the permission of the concerned authority and go ahead with the recruitment from the open competition: [As per G.O. Ms. No.873 Education Science and Technology (D2) Dept. dt. 13.11.95].
iii) Appointment to the post of Head of a High School :- For filling the vacancy of Head of Institution of a High School, the management shall maintain a panel of names of all fully qualified and eligible candidates in the feeding cadre, i.e., category of B.T. Asst. and other eligible categories on identical scales of pay as on 1st June of each year, and their names arranged according to their seniority to be determined with reference to the date of joining the eligible cadre in that School following the procedure prescribed in sub rule (ii) above. The claims of the first five candidates in that panel shall be considered and the best among them shall be selected. While making the selection due consideration should be given to
(a) Teaching
(b) Proficiency in the subject
(c) Leadership qualities
(d) Ability to maintain discipline
(e) Special contribution made for the growth and development of the Institutions
(f) Sociability and
(g) Personality and bearing
(iv) Appointment to the post of Head of a Higher Secondary School :- Appointment to the post of Head of Institution of a Higher Secondary School shall be made by the methods specified below.
Promotion from among the qualified and eligible candidates in the category of Heads of High Schools (and the T.T.I.) under the same Educational Agency based on seniority.
If no qualified and eligible candidate is available by method (a) above, promotion from the feeding category of P.G. Assistants in academic subjects and languages provided they possess the prescribed qualifications. For the purpose of this rule, an integrated seniority list of all prima-facie fully qualified and eligible candidates belonging to various academic subjects and languages as on 1st June of each year shall be maintained. Their names in the panel shall be arranged according to their inter-se seniority fixed with reference to the date of joining the P.G. Cadre in that School after becoming fully qualified for the post of P.G. Asst.
The claims of the first five candidates in the panel shall be considered and the best among them shall be selected. While making the selection, due consideration should be given to the factors (a) to (g) mentioned in sub rule (iii) above."
Learned Additional Government Pleader appearing on behalf of the State, after verification, submitted that no such amendment has been made to Rule 15 (4) of the Tamil Nadu Recognised

Private Schools (Regulation) Rules, 1974.

7. As per rule 15 (4), relied on by the appellant and accepted by the learned counsel for the State as the rule in vogue, promotions to be made on the ground of merit and ability only and seniority may play its role only if merit and ability are approximately equal. In view of the aforesaid Rule 15 (4) , the appellant, Tmt.Vasantha, having adjudged more meritorious and being senior to the 1st respondent, Mr.M.Velusamy, we are of the view that the appellate authority, the Joint Director of School Education (Higher Secondary), vide proceeding dated 10th May, 2007, rightly allowed the appeal in favour of the appellant.

8. So far as the submission made on behalf of the 1st respondent relating to so-called amended Rule 15 (4) is concerned, even on the basis of the said rule, the 1st respondent cannot claim advantage over the appellant on the basis of age.
Learned counsel for the 1st respondent relied on so-called amended Rule 15 (4) (1) and sub-para 3 to Rule 15 (4) (2), as quoted hereunder :-
"(4) (1) (i) Promotion to the category of teachers and other persons shall be made on the basis of school seniority.
* * * * * * * *
For the purpose of promotion, a panel of names of prima facie fully qualified and eligible candidates in each category shall be prepared as on 1st June of each year. If there is more than one category on identical scale of pay they should be grouped together. The panel should contain the names of all fully qualified and eligible candidates. Their names should be arranged according to their inter-se seniority determined by the date of joining duty in that school. If it happens to the be same date for more than one, their inter-se-seniority shall be fixed with reference to their dates of birth, the elder being given the higher place."
But the aforesaid so-called amended Rule 15 (4) is not applicable for appointment/promotion to the post of Head of a Higher Secondary School, which prescribed the following mode under so-called amended Rule 15 (4) (2) (iv), as quoted hereunder :-
"(iv) Appointment to the post of Head of a Higher Secondary School :- Appointment to the post of Head of Institution of a Higher Secondary School shall be made by the methods specified below.
Promotion from among the qualified and eligible candidates in the category of Heads of High Schools (and the T.T.I.) under the same Educational Agency based on seniority.
If no qualified and eligible candidate is available by method (a) above, promotion from the feeding category of P.G. Assistants in academic subjects and languages provided they possess the prescribed qualifications. For the purpose of this rule, an integrated seniority list of all prima-facie fully qualified and eligible candidates belonging to various academic subjects and languages as on 1st June of each year shall be maintained. Their names in the panel shall be arranged according to their inter-se seniority fixed with reference to the date of joining the P.G. Cadre in that School after becoming fully qualified for the post of P.G. Asst.
The claims of the first five candidates in the panel shall be considered and the best among them shall be selected. While making the selection, due consideration should be given to the factors (a) to (g) mentioned in sub rule (iii) above."
As per the aforesaid provision also, promotion to be made based on seniority and panel has to be arranged according to their inter-se seniority fixed with reference to the date of joining the P.G. cadre in the school. Both the appellant and the 1st respondent having promoted as P.G. Assistant on the same date, i.e., 11th Sept., 1985, in such case also, the appellant will rank senior, being senior in the cadre next below.

9. Apart from the fact that learned single Judge failed to notice the aforesaid fact, we are of the view that it was not desirable for learned single Judge to set aside the appellate order dated 10th May, 2007, without deciding the claim of the parties on merits. For the said reason, we have no other

option but to interfere with the impugned order passed by learned single Judge. We, accordingly, set aside the order dated 25th Oct., 2007, passed by learned single Judge and restore the order dated 10th May, 2007, passed by the appellate authority, the Joint Director of School Education (Higher Secondary).

10. So far as the 1st respondent is concerned, he acted as Headmaster of the school in view of interim order passed by this Court and superannuated during the pendency of the writ petition. For the said reason, we are not directing to recover any amount from the salary of the 1st respondent, though it will be open to the State to fix his pension notionally, treating him a P.G. Assistant of the school, the basic post against which he was functioning, without taking into consideration the order of promotion, which was originally issued in his favour, but set aside by the appellate authority. The writ appeal is allowed with the aforesaid observations. Consequently, connected miscellaneous petition is closed. But there shall be no order as to costs.

GLN

To
1. The Director of School Education
College Road, Chennai 600 006.

2. The Joint Director of School Education (Hr. Sec.)
College Road
Chennai 600 006.

3. The Chief Educational Officer
Tiruvallore District,
Tiruvallore.

4. The District Educational Officer
Ponneri Education District
Ponneri,
Tiruvallore.